

Form Agreed Order for Summary Jury Trial

IN THE _____ COURT
FOR _____ COUNTY, TENNESSEE

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)

Plaintiff,)

v.)

NO. _____

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)

)

Defendant.)

AGREED ORDER FOR SUMMARY JURY TRIAL

This action has been scheduled for Summary Jury Trial by agreement of the parties and pursuant to Tennessee Rule of Civil Procedure 16 and Tennessee Supreme Court Rule 31 and by agreement of the parties. The Court, by entering this order, is not depriving the parties of their right to proceed to trial in accordance with the applicable law. The pendency of Summary Jury Trial shall not interfere with the right and obligation of the parties to proceed with discovery and/or to make such motions to the Court as they may deem appropriate with respect to the preparation of their cases for trial.

It is accordingly ORDERED

1. Summary Jury Trial

A Summary Jury Trial is set for [_____], at [____] a.m. to be conducted before a 12-member advisory jury and Judge [_____], being a judge other than the judge who shall preside at trial, should trial be necessary.

2. Challenges

Plaintiff(s) shall be entitled to exercise three challenges, and defendant(s) collectively shall be entitled to exercise three challenges after a brief voir dire examination to be conducted by counsel. There shall be no alternate jurors.

3. Jury Instructions

Counsel shall submit proposed jury instructions along with briefs on any novel issues of law presented by the case on or before [_____].

4. Attendance

4.1 Parties to Attend

The parties themselves shall attend the Summary Jury Trial unless excused as provided in this section. This requirement reflects the Court's view that one of the principal purposes of the Summary Jury Trial is to afford litigants an opportunity to articulate their positions and to hear, first-hand, both their opponent's version of the matters in dispute and a neutral assessment of the relative strengths of every party's case. A party other than a natural person (e.g., a corporation or association) satisfies this attendance requirement if it is represented at the Summary Jury Trial by a person (other than outside counsel) with authority to enter stipulations (of fact, law, or procedure) and to bind the party to terms of a settlement. A party that is a governmental unit need not have present at the Summary Jury Trial the persons who would be required to approve a settlement before it could become final (e.g., the members of a city council or the chief executive of a county or major agency) but must send to the session a representative, in addition to trial counsel, who is knowledgeable about the facts of the case and the party's position and is the person who has the authority and responsibility to make recommendations to the ultimate decision-making body. In cases involving insurance carriers, representatives of the insurance companies, with authority, shall attend the Summary Jury Trial.

4.2 Attorneys to Attend

Each party shall be represented at the Summary Jury Trial by the attorney expected to be primarily responsible for handling the trial of the matter.

4.3 Excuses for Non-Attendance

A party or lawyer shall be excused from attending the Summary Jury Trial only after a showing that attendance would impose an extraordinary or otherwise unjustifiable hardship. A party or

lawyer seeking to be excused must petition the judge, in writing, no fewer than 15 calendar days before the date set for the Summary Jury Trial. Any such petition shall be in the form of a letter to the judge, a copy of which shall be sent to all parties, and which shall set forth all considerations that support the Request and shall state realistically the amount in controversy in the case. The Judge shall rule on such petitions. A party or lawyer who is excused from appearing in person at the Summary Jury Trial shall be available to participate by telephone.

4.4 Attendance of Non-Parties

With approval of the judge, subpoenas may be issued to compel the presence of non- parties.

5. Evidence

All evidence shall be presented through attorneys for the parties with the exception that video presentations by experts or others shall be permitted. The attorneys may summarize and comment on the evidence and may summarize or quote directly from depositions, interrogatories, requests for admissions, documentary evidence and sworn statements of potential witnesses. However, no witness's testimony may be referred to unless the reference is based upon one of the products of the various discovery procedures, or upon a written, sworn statement of the witness, or upon representation of counsel that the witness would be called at trial, and that counsel has been told the substance of the witness's proposed testimony by the witness.

6. Bifurcation

6.1 This Summary Jury Trial shall be bifurcated into a liability phase and a damages phase. Plaintiff(s) shall (collectively) be allotted [_____] to make a presentation to the jury regarding the facts of the case regarding liability. Defendants shall (each) be allotted [_____] for their presentation of the facts of the case regarding liability. Plaintiffs and defendants (collectively) shall each be allotted [_____] to make a final presentation, which shall include any rebuttal on the question of liability. Plaintiffs may divide their presentation so as to speak last.

6.2 Regardless of whether the jury returns a verdict of liability, the Summary Jury Trial shall contain a damage phase. Plaintiff(s) shall be allotted [_____] for a presentation on damages. Defendants shall be allotted [_____] for a presentation on damages. Plaintiffs may divide their presentation so as to speak last.

7. Exhibits

Before the Summary Jury Trial, counsel shall confer with regard to physical exhibits, including documents and reports. The parties shall make a list from all available exhibits they intend to

use at the Summary Jury Trial for inspection by opposing counsel on or before [_____]. Additionally, the parties shall jointly prepare and submit to the Court and courtroom deputy at the outset of the trial a list of the exhibits which have been marked, tagged and numbered by the parties. The parties, prior to the Summary Jury Trial date, shall endeavor to stipulate the admissibility of the exhibits. If the parties cannot stipulate the admissibility of any exhibit, the Court shall rule, if practical, on its admissibility prior to the commencement of the Summary Jury Trial.

8. Objections

Objections shall be received if, in the course of a presentation, counsel goes beyond the limits of propriety in presenting statements as to evidence or argument thereon. After presentations by counsel, the jury shall be given an abbreviated charge on the applicable law.

9. Form of Verdict

The jury may return either a consensus verdict or a special verdict consisting of an anonymous statement of each juror's findings on the issues submitted. The jury shall be encouraged to reach a consensus verdict. Counsel are encouraged to agree upon a verdict form. If agreement cannot be reached, each party desiring to submit a proposed verdict form must do so by [_____], and the judge shall then prepare a verdict form.

10. Record

Unless specifically authorized by the Court, the proceedings shall not be recorded.

11. Stipulation for Binding Determination

Counsel may stipulate that a consensus verdict by the jury shall be deemed a final determination on the merits and that judgment be entered thereon by the Court, or may stipulate to any other use of the verdict that shall aid in the resolution of the case. Any such stipulations may be made at any time before, during or after the proceedings.

12. Confidential Admissibility of Statements

The Court and all counsel and parties shall treat as confidential all written and oral communications made in connection with or during the Summary Jury Trial process. The Court hereby extends to all such communications all the protections afforded by Tennessee Rule of Evidence 408. No communication made in connection with any summary judgment should be used for any purpose (including impeachment) in any pending or future proceeding in this Court, nor shall anything in this paragraph be construed to prohibit parties from entering and

filing procedural or factual stipulations based on suggestions or agreements made in connection with a Summary Jury Trial session.

13. No Judicial Admission

No statements of counsel or of any party during the course of the Summary Jury Trial shall be construed as a judicial admission.

14. Discussion With Jurors

Counsel shall have an opportunity to question jurors in an informal manner following the termination of the Summary Jury Trial. However, no Summary Jury Trial juror may be called as a witness at a subsequent hearing or proceedings in this litigation as to any matter that is stated or emerges during the Summary Jury Trial, nor may any statement made by any such juror(s) be admitted in any subsequent hearing or proceeding in this litigation.

15. Costs

Unless counsel [_____] otherwise, the costs shall be assessed by the Court.

ENTER

JUDGE